UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/2000/19
4 December 2000

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Twenty-fourth session
Geneva, 13 November-1 December 2000
Item 3 of the provisional agenda

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: Day of General Discussion "The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (Article 15.1(c) of the Covenant)" organized in cooperation with the World Intellectual Property Organization (WIPO)

Monday, 27 November 2000

INTELLECTUAL PROPERTY AND HUMAN RIGHTS

WORKING DRAFT

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[1] This document does not necessarily reflect the views of the Member States of the World Intellectual Property Organization.

I. Introduction

1. The World Intellectual Property Organization (WIPO) welcomes the decision of the Committee on Economic, Social and Cultural Rights (the CESCR) to organize a Day of General Discussion on Article 15.1(c) of the International Covenant on Economic, Social and Cultural Rights (the Covenant). WIPO willingly, at the request of the Office of the High Commissioner for Human Rights (OHCHR) and the CESCR, agreed to cooperate in organizing the Discussion. WIPO's contribution was to assist the CESCR in publicizing this Discussion within the intellectual property (IP) community. WIPO looks forward to the opportunity to participate in and contribute information on IP to this Discussion and to subsequent meetings and events concerning IP and human rights.

2. The globalization of markets and regulation, rapid advances in new technology (biotechnology and information technology) and the growing value of intellectual commodities as central assets in a knowledge-based society accentuate the importance of IP and its relevance in other policy areas. These areas include food and agriculture, biological diversity and the environment, biotechnology innovation and regulation, health care, human rights, indigenous peoples' rights, cultural policies and trade and development.

3. The heightened visibility of IP leads to increased scrutiny of the adequacy of current IP laws, policies and procedures. A continuous examination and appraisal of the IP system – and of its role in a broader developmental context – is healthy and ultimately strengthens the system. However, discussions concerning the role of IP in other policy areas are sometimes based upon misunderstandings and are thus confused and incomplete. One of the reasons is that relevant constituencies at the national and international levels do not yet communicate effectively with each other. As a result, policymakers responsible for food and agriculture, biological diversity and the environment, health, human rights, and the other areas mentioned above, are not yet familiar with the perspectives of their counterparts responsible for IP, and *vice versa*. In addition, concerns with IP are sometimes proxies for larger political, economic, social and cultural concerns that are not necessarily IP-related. In these cases, the debates are more ideological than technical and practical.

4. WIPO encourages and supports discussions between different constituencies (such as the IP and human rights communities) that are balanced and based upon accurate and technical information about IP. The relationship between intellectual property and human rights is complex, dynamic and at times ambiguous – in particular cases, IP and human rights principles may either complement or compete with each other. What is needed are theories, frameworks and, above all, practical tools that assist the IP and human rights communities to better comprehend and manage this relationship.

5. WIPO has found the Discussion Paper prepared for this meeting (Document E/C.12/1998/12) (the Discussion Paper) very interesting and useful, and addresses below certain of the points it makes. WIPO does, however, not comment on all aspects of the Discussion Paper.

6. With this introduction, Section II of this paper describes, briefly, the mandate and activities of WIPO. Section III identifies the main elements of the IP system, with particular

attention to certain aspects relevant to the relationship between IP and human rights. Section IV comprises more general observations on the relationship between IP and human rights, and Section V a conclusion.

II. The Mandate and Activities of WIPO

7. WIPO is one of the specialized agencies of the United Nations (UN) system of organizations. WIPO's mandate is the promotion of the protection of IP throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization.[2]

8. WIPO has currently 175 Member States. WIPO's headquarters are in Geneva, Switzerland. WIPO's main activities include:

- facilitating the conclusion of new international treaties and the modernization of national legislation;
- administration of more than twenty international treaties in the fields of copyright, related rights, patents, industrial designs and marks;
- providing technical advice and assistance to developing countries as part of an extensive development cooperation program;
- the assembly and assimilation of information and advice to a diverse range of parties; and,
- the maintenance of services for facilitating the obtaining of protection of inventions, marks and industrial designs for which protection in several countries is desired, such as the Patent Cooperation Treaty, 1970, the Hague Agreement Concerning the International Deposit of Industrial Designs, 1925, and the Madrid Agreement Concerning the International Registration of Marks, 1891, and the Protocol Relating to that Agreement, 1989.

9. WIPO has in recent years initiated several new programs of activities on, for example, the protection of traditional knowledge and the IP aspects of the preservation, conservation and dissemination of biological diversity, including of access to and benefit-sharing in genetic resources; the specific needs and interests of least-developed countries (LDCs); and, the intellectual property needs of small and medium-sized enterprises (SMEs).

10. Many of the international treaties administered by WIPO set out internationally agreed minimum rights and standards in the various fields of IP. These treaties have been negotiated and adopted by WIPO's Member States. Intellectual property rights (IPRs) are limited territorially and can only be exercised within the jurisdiction of a country granting these rights. With the increasing interdependency of countries, membership of the treaties makes it possible for each member country to agree to grant to nationals of other countries in the union the same protection as they grant to their own nationals as well as to follow certain common

[2] Article 3(i), Convention Establishing the World Intellectual Property Organization, 1967. The Convention entered into force in 1970.

rules, standards and practices. Certain of the treaties (such as the Patent Cooperation Treaty, 1970) establish mechanisms whereby protection can be obtained in several countries (the so-called "global protection treaties").

III. Intellectual Property: Main Elements

Basic Concepts

11. "Intellectual property" refers to property rights in creations of the mind, such as inventions, industrial designs, literary and artistic works, symbols, and names and images. The notion "intellectual property" is defined in the Convention Establishing the World Intellectual Property Organization (WIPO), 1967[3] to include rights relating to:

- literary, artistic and scientific works;
- performances of performing artists, sound recordings and broadcasts;
- inventions in all fields of human endeavor;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and,
- all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

12. IP is generally divided into two main categories:

- The protection of **industrial property** has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, geographical indications (indications of source or appellations of origin), and the repression of unfair competition.[4]

- **Copyright** includes literary and artistic works, such as novels, poems and plays, films, musical works, and drawings, paintings, photographs and sculptures, computer software, databases, and architectural designs. **Related rights** (also referred to as "neighboring rights") include the rights of performing artists in their performances, producers of sound recordings in their sound recordings, and those of broadcasters in their radio and television broadcasts.

13. As the definition in the WIPO Convention indicates, "intellectual property" is not confined to the specific examples of IP just mentioned. The phrase at the end of the definition in the WIPO Convention ("all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields") makes it clear that "intellectual property" is a broad concept and can include productions and matter not forming part of the existing categories of

[3] Article 2 (viii).

[4] Article 1.2, Paris Convention for the Protection of Industrial Property, 1883. The Paris Convention has been updated and amended several times since 1883, most recently in 1967.

IP, provided they result from intellectual activity in the industrial, scientific, literary or artistic fields.

14. Additionally, **plant varieties** qualify for protection in many countries under the *sui generis*, IP-related system of plant breeders' rights. The International Convention for the Protection of New Varieties of Plants, 1991 (the UPOV Convention) provides international standards for the protection of plant varieties. The International Union for the Protection of New Varieties of Plants (UPOV), which is based in Geneva, administers the UPOV Convention.

Objectives of IP Protection

15. The primary purpose of most branches of the IP system (excluding trademarks and geographical indications[5]) is to promote and protect human intellectual creativity and innovation. IP law and policy does so by striking a careful balance between the rights and interests of innovators and creators, on the one hand, and of the public at large, on the other. Thus, by granting exclusive rights in an invention, for example, the IP system establishes incentives for further innovation, rewards creative effort, and protects the (often substantial) investment necessary to make and commercialize the invention. The public interest is served because a broader range of innovative and creative products are generated and made available.[6]

16. Thus, in relation to pharmaceutical products, for example, the Director General of the World Health Organization (WHO), Dr. Gro Harlem Brundtland, has stated:

> *"[T]o develop new drugs we need an innovative pharmaceutical industry, with appropriate incentives for innovation and protection of intellectual property rights. Experience demonstrates that protection of intellectual property rights goes hand-in-hand with successful research and development."*[7]

17. **The Disclosure and Dissemination of Information:** The patent system encourages people to disclose inventions, rather than retain them as trade secrets, thus enriching the store of publicly-available knowledge and promoting further innovation by other inventors. In fact, disclosure of the invention is one of the requirements for obtaining a patent, the others being that the invention is novel, involves an inventive step (non-obviousness) and is industrially useful. Exclusive rights are granted in return for a wide dissemination of the results of inventiveness and creativity, while society at large benefits because the protected productions can then be used as a basis for further creative and inventive work.

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[5] The protection of trademarks and geographical indications is aimed at the protection of the goodwill and reputation of tradespersons and their products and to prevent the unauthorized use of such signs which is likely to mislead consumers.

[6] IP protection is, however, only one of the conditions necessary for further innovation and creation. At the national level, various other factors may also be necessary, such as investor security, access to capital, a suitable regulatory environment, and appropriate tax incentives.

[7] *"Globalization and Access to Drugs: Perspectives on the WTO/TRIPS Agreement"* (Health, Economics and Drugs DAP Series, No. 7), World Health Organization, 1999, p.67.

18. More recently, information technology has enhanced the availability of patent information – for example, information on recent and current patents granted by the Canadian Intellectual Property Office, the United States Patent and Trademark Office, the European Patent Office and the Japanese Patent Office is available on-line, generally free of charge. The WIPO "Intellectual Property Digital Libraries (IPDLs)" Project aims to facilitate access to and exchange of IP information by the IP community worldwide. Access by developing countries to this information could be a tool for technology transfer and economic development to the benefit of these countries and their inventors, industry, universities, and research and development institutions. In implementing this project, WIPO will take advantage of the global digital information network being developed and established by WIPO (known as the WIPONet project).

19. Thus, public dissemination of patent information is an important IP objective. Copyright and other IP branches work in a similar way. The progress and well-being of humanity rests on its capacity for new creations in areas of technology and culture. The promotion and protection of IP can also spur economic growth, create new jobs and industries, and enhance the quality and enjoyment of life.

The Nature of Intellectual Property Rights

20. IP rights generally comprise exclusive rights to prevent or authorize the reproduction, adaptation, use, sale, importation and other forms of exploitation of the creation or innovation that is the subject of the rights. In some cases, an IP right may not be an exclusive right, but may rather comprise the right to claim a reasonable remuneration upon the exercise by a third party of any of the acts referred to.

21. Almost all IP rights are limited in term. The term of copyright is generally 50 years following the author's death. Patents are generally valid for 20 years from the date of filing the application. In reality, however, patents are normally granted some time after the application, with the result that most patents are effective for no longer than 16 or 17 years at the most. In a number of cases, especially where marketing approvals are needed, patent terms are often not longer than 10 years.

22. **IP rights are "negative rights"**: IP rights are "negative rights", in the sense that they allow the rightholder to prevent the unauthorized exercise of his or her rights. In the case of patents, for example, the grant of a patent over a particular technology does not of itself permit or sanction its commercialization and use. The patent simply allows the patentee to prevent others from using the invention without his or her permission. The patent does not constitute a "positive right" to perform the patented invention. Other laws, such as those for the protection of safety and security, the environment and human or animal health, may constrain the use to which the patentee may put the invention. Such constraints include, for example, the requirement in many countries that marketing approval be obtained from a health ministry for pharmaceutical products.

23. It is sometimes suggested that IP law should be held responsible for preventing the making available of products that may be harmful or undesirable.[8] However, the patenting or the exclusion from patenting will not in and of itself cause or prevent the invention of new products or processes, nor their commercialization. To discourage or prevent the invention of new products or processes that are deemed undesirable for one reason or another, an explicit ban or restriction would need to be put in place by the relevant domestic laws.

24. In short, it is the existence and use of the technologies that is the issue, and not their patentability. The absence of patent protection would not necessarily prevent the commercialization of undesirable products; on the contrary, the absence of IP protection may even encourage their wider dissemination.

Limitations and Exceptions

25. All IP rights are subject to various exceptions and limitations, and in some cases compulsory (non-voluntary) licenses, tools which can be used to strike the right balance between the rights of creators and users. For the purpose of achieving the public policy goals of IP, the possibility of imposing limitations on IPRs can be an important tool in the hands of national lawmakers. We will return to this important point below.

Constant Evolution

26. Another feature of the IP system is that it is in constant evolution. New advances in technology – information technology and biotechnology particularly – and changes in economic, social and cultural conditions require continuous appraisal of the system and at times adjustment and expansion, accompanied often by controversy. For example, the last few decades have seen the recognition of new forms of IP, such as a *sui generis* form of protection for plant varieties (in the 1950s and 1960s), patent protection for modified biological material, plants and animals (in the 1970s and 1980s), a *sui generis* form of protection for layout designs (topographies) of integrated circuits (1980s), copyright protection for computer software (1980s) and protection for databases and compilations of data (1980s and 1990s).

27. The possible protection of tradition-based innovations and creations by the IP system is a more recently articulated question. This question is also referred to several times in the Discussion Paper.[9] Existing IP laws and procedures may not adequately meet the needs of all traditional innovators and creators. This may be so for various legal and practical reasons. The reciprocal relationships IP and access to genetic resources, the protection of biotechnological inventions and the preservation, conservation and dissemination of biological diversity, are yet further, and related, areas meriting attention.

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[8] For example: *"States Parties should develop an adequate process of review to anticipate potential harmful effects resulting from the patenting of specific products and processes and to deny IP protection to these items. Many technologies, such as the widespread production of toxic chemical substances and the genetic revolution, pose substantial risks as well as potential benefits."* (Discussion paper page 13.

[9] Discussion Paper, pages 11, 19 and 22 to 23.

28. These issues are complex, however. Discussions concerning intellectual property, traditional knowledge and genetic resources are sometimes based upon misunderstandings. These issues merit exploration based upon a fine-grained and technical understanding of the nature and role of IP.

29. For example, the IP system is often criticized for recognizing only single owners of rights and therefore failing to accommodate the collective rights of communities or other groups of individuals, particularly in the field of traditional knowledge (TK).[10] However, the fact-finding missions and other activities of WIPO (see below) indicate that the reality is more complicated than these generalizations suggest. First, not all TK is collective. While it is true that many indigenous and local community cultures generate and transmit knowledge from generation to generation collectively, in some cases individuals can distinguish themselves and are recognized as informal creators or inventors separate from the community.[11] Similarly, not all IPRs are individualistic. Increasingly, invention and creation take place in firms where groups of persons may be cited as co-inventors or co-authors, concepts recognized by the IP system. Trademark law recognizes "collective marks" and geographical indications also protect the interests of a collective. Additionally, the collective management of IPRs is very familiar to the music industry, where copyright in musical works has been successfully managed in this way for many years.

30. In recognition of the importance of these matters, in 1998 WIPO's Member States mandated a new exploratory program on the reciprocal and dynamic relationships between IP and tradition-based innovation and creation, and the preservation, conservation and dissemination of global biological diversity. In 1998 and 1999, WIPO *inter alia* undertook nine fact-finding missions (FFMs) to 28 countries to learn about the needs and expectations of TK holders (such as indigenous peoples and local communities) in relation to the protection of their TK. The information gathered during these FFMs has been published by WIPO in the form of a draft Report *"Intellectual Property Needs and Expectations of Traditional Knowledge Holders: World Intellectual Property Organization (WIPO) Draft Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999)"*. This Report has been available for public comment since July 7, 2000. The commenting period closes on December 15, 2000, after which a final Report will be issued. Other activities during 1998 and 1999 included two Roundtables in Geneva; four regional consultations on folklore, organized with the United Nations Educational, Social and Cultural Organization (UNESCO), in South Africa, Viet Nam, Tunisia and Ecuador; and, with the United Nations Environment Programme (UNEP), the commissioning of studies on *"The Role of Intellectual Property Rights in the Sharing of Benefits Arising from the Use of*

[10] For example, the Discussion Paper, page 11.

[11] Statement by Anil Gupta, Indian Institute of Management, Ahmedabad, India, at WIPO Roundtable on Intellectual Property and Traditional Knowledge, Geneva, November 1 and 2, 1999. See also Downes, D., *"Using Intellectual Property as a Tool to Protect Traditional Knowledge: Recommendations for Next Steps"*, Draft CIEL Discussion Paper prepared for the Convention on Biological Diversity Workshop on Traditional Knowledge, November 1997, p. 3; Chand *et al*, *"Contracts for 'Compensating' Creativity: Framework for Using Market and Non-Market Instruments for Rewarding Grassroots Creativity and Inrovation"*, paper prepared for Forum Belem: Paths of Sustainable Development, November 1996; and, "Traditional Knowledge: A Holder's Practical Perspective", Varma Shri Sundaram, SRISTI, paper presented at WIPO Roundtable on Intellectual Property and Traditional Knowledge, Geneva, November 1 and 2, 1999.

Biological Resources and Associated Traditional Knowledge".

31. Most recently, the Member States of WIPO have established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.[12] This Committee, which will comprise WIPO's Member States, will meet for the first time in Spring 2001 in Geneva. Intergovernmental organizations and accredited international and regional non-governmental organizations will be able to participate as observers.

32. WIPO can provide further information on its activities, intellectual property in general and on the particular projects, programs and activities mentioned above. Such information is also available on WIPO's website at <www.wipo.int> For more information on WIPO's work thus far on the relationship between IP, traditional knowledge and genetic resources, please see <www.wipo.int/traditionalknowledge> and <www.wipo.int/biotech> Copies of the draft Report on the FFMs and the WIPO/UNEP case-studies can be obtained, free of charge, from WIPO.

[12] Assemblies of the Member States of WIPO (September 25 to October 3, 2000).

IV. Intellectual Property and Human Rights – Certain Observations

33. We have already noted the growing relevance of IP in other policy areas. IP issues are also relevant to human rights, and *vice versa*. As the Discussion Paper puts it:

> *"Moreover, the very centrality of intellectual property to almost every sphere of economic life means that international treaties, national legal codes, and judicial decisions about intellectual property can have significant ramifications for the protection and promotion of other human rights. This is particularly the case for the economic, social, and cultural rights enumerated in the Covenant."*[13]

34. Yet, the relationship between IP and human rights has received little attention. It was in recognition hereof that WIPO, in cooperation with the OHCHR, organized the successful Panel Discussion on Intellectual Property and Human Rights on November 9, 1998.[14]

35. Article 15 of the Covenant protects both the human right of authors to benefit from the moral and material interests resulting from their literary, artistic and scientific productions,[15] and the right of the public to have access to productions protected by the author's right.[16] The two rights are formulated and juxtaposed in a similar way in the Universal Declaration of Human Rights, 1948 (UDHR).[17]

36. The right to use and diffusion of information – the freedom "to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits" – and the right to protect the creators of information – the "moral and material interests resulting from any scientific, literary or artistic production of which he is the author" – may at once be both complementary and competing. Realization of the former rights may depend upon the promotion and protection of the latter rights; on the other hand, exercise of the latter rights may, in certain circumstances, appear to hinder or frustrate realization of the former rights.

37. This tension is, however, the antechamber to a larger debate on the relationship between IP and the realization and promotion of other human rights in the CESCR and the UDHR, such as the rights to health, adequate food and education.

38. Resolving tensions and striking balances is, however, not unfamiliar to the IP system. As mentioned earlier in this paper, all IP rights are subject to various exceptions and limitations, and in some cases compulsory (non-voluntary) licenses, tools which can be used to strike the right balance between the rights of creators and users. These limitations can

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[13] Discussion Paper, page 2 bottom.

[14] The proceedings of the Panel Discussion have been published as Intellectual Property and Human Rights, World Intellectual Property Organization, 1999.

[15] Article 15.1(c) of the International Covenant on Economic, Social and Cultural Rights, 1966: *(Everyone has the) "right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."*

[16] Article 15.1 (a) and (b).

[17] Articles 27.1 and 2.

resolve tensions internally to intellectual property and externally to other systems – such as human rights.

39. International IP standards provide for legal measures that may be adopted in national laws to balance the rights and interests of rightsholders and the public. These measures permit national authorities to craft their IP laws in line with their respective economic, social, technological and cultural developmental goals.

40. For example, in the field of patents, these measures enable national laws to exclude from patentability what would otherwise be patentable subject-matter or to restrict patent rights, on grounds such as the protection of human, animal or plant life and health, prejudice to the environment, morality and the *ordre public*.[18]

41. More generally, Article 8 of the TRIPS Agreement provides that:

> *1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.*
>
> *2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology."*

42. In addition, national laws can authorize compulsory licensing under certain conditions (as set out in Article 31 of the TRIPS Agreement) and measures can be adopted to control anti-competitive practices in contractual licenses (see Article 40 of the TRIPS Agreement).

43. However, these are enabling provisions only, and their precise scope, meaning and effect in practice are subject to the interpretation and implementation of national law-makers.

44. The possibilities created by the provisions are not, however, unlimited and should not be interpreted so broadly as to negate the underlying fundamental goals and advantages of the IP system. The patent system, for example, encourages people to invent. By granting exclusive rights in an invention for a limited period of time, people, in particular those engaged in commercial enterprises, are more willing to invest in the resources necessary to

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[18] See for example Article 27.2 of the TRIPS Agreement: *"Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law."*

make and commercialize the inventions. The patent system also encourages people to disclose inventions, rather than retain them as trade secrets. It should also be borne in mind that new inventions, by definition, do not take away from the public what the public already had. Inventions have to be new, which means different from what was before.

45. Similarly, in the field of copyright, national legislators may take advantage of certain exceptions and limitations to achieve national goals and objectives. Once again, these exceptions and limitations are, however, not designed to undermine the fundamental principles of the copyright system.

46. All human rights are interdependent and indivisible. As has been noted:

> *The notion of interdependence and indivisibility of all human rights constitutes a fundamental principle, in the field of the promotion and protection of human rights in the framework of the United Nations.*[19]

47. The Vienna Declaration and Programme of Action, adopted during the Second World Conference on Human Rights in 1993, expressly mentions that:

> *All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.*[20]

48. Thus, to the extent that there may be conflicts between IP decisions and the imperatives of other human rights (whether those identified in Articles 27 and 15 of the UDHR and the Covenant respectively, or the human rights spelled out in other articles), a balance must be struck that treats both sets of imperatives fairly, equally, on the same footing and with the same emphasis.

49. Tensions between various human rights are not uncommon and balances of this nature must be struck all the time. For example, tensions between the rights to freedom of speech and the rights to privacy and to dignity are well known.

50. Thus, IP laws do not vest authors and inventors with absolute and unrestricted rights, as is sometimes suggested. For example, the Resolution passed by the Sub-Commission on the Promotion and Protection of Human Rights on August 17, 2000 (E/CN.4/Sub.2/2000/7) affirms that IP is a human right "*subject to limitations in the public interest*" (substantive paragraph 1). Such statements appear to pass over the complementarity of interests that authors/inventors and the wider public have in an IP system and the system's built-in limitations, exceptions and tools that can be used to find the right balance.

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[19] Arambulo, K. Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights (Intersentia Publishers, Antwerp, 1999), p. 100.

[20] UN Doc. A/CONF.157/23, Vienna Declaration and Programme of Action, par. 5 (p.5), quoted in Arambulo, *op. cit.* p. 112.

51. Of course, there may always be legitimate disagreements over what constitutes the "right balance". As to what is the right balance, much depends upon one's perspective. Just as with a "clash" between, for example, the rights to freedom of speech and to privacy, there is often no single right answer, but as many perspectives as there are affected constituencies. Implicit within the notion of "balance" is a compromise in which as many competing interests as possible are satisfied as far as possible. The IP system allows lawmakers certain flexibilities and options to meet their respective developmental goals, and is so doing the opportunity to strike the right balance.

V. Conclusions

52. The more IP becomes central to economic growth and wealth creation, the greater will be the challenge of developing the international IP system in a way that it be instrumental to social, economic, technological and cultural development of all the world's peoples.

53. The relationship between intellectual property and human rights is complex, dynamic and ambiguous. Theories, conceptual frameworks and, above all, practical tools to assist the IP and human rights communities to better comprehend and manage this relationship are necessary. Improving the provision of technical and accurate information on IP and its effects, and increased dialogue and cooperation between the IP and human rights communities are possible ways forward. So too is the examination of these issues with reference to specific and concrete cases, rather than on a general and ideological plane.

54. As Peter Drahos put it:[21]

> *Ideally the human rights community and the intellectual property community should begin a dialogue. The two communities have a great deal to learn from each other. Viewing intellectual property through the prism of human rights discourse will encourage us to think about ways in which the property mechanism might be reshaped to include interests and needs that it currently does not. Intellectual property experts can bring to the aspiration of human rights discourse regulatory specificity. At some point the diffuse principles that ground human rights claims to new forms of intellectual property will have to be made concrete in the world through models of regulation. These models will have to operate in a world of great cultural diversity. Moreover, the politics of culture is deeply factional, globally, regionally and locally. It is in this world that the practical issues of ownership, use, access, exploitation and duration of new intellectual property forms will have to be decided. It is here that intellectual property experts can make a contribution.*

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[21] Drahos, P. "The Universality of Intellectual Property Rights: Origins and Development" in Intellectual Property and Human Rights (WIPO, 1999), p. 34.